IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3442 OF 2007
IN
CHAMBER SUMMONS NO.995 OF 2005
IN
SUIT NO.3299 OF 2003

Heji Ismail Haji Habib Musafirkhana Trust & Ors. ...Plaintiffs

Versus

Yusuf Saleh Mohd.Jafrani & Ors. ...Defendants

And

The Court Receiver, High Court, Mumbai ...Respondent

And

Hashmat N. Abdulla Qureshi & Ors. ...Applicants

Ms Sarkhot i/by R.V.Govilkar for the Plaintiffs.

Shri R.K.Mishra i/by S.S.Lanke for the Defendants in support of Notice of Motion.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 04th, 2007.

P.C.:

1. Heard the counsel for the Applicants and the learned counsel for the Plaintiffs. The substantive prayer in this Notice of Motion is for restoration of Chamber Summons No.995 of 2005 which was dismissed for non prosecution on 25th October, 2005. I have perused the record of the Chamber Summons No.995 of 2005. The record shows that on 25th October, 2005 the said Chamber Summons was dismissed for non prosecution as none appeared for the Applicants. On the same day there is another order passed by the same learned Judge recording that at 3.00 p.m advocate for the Applicants appeared

and tendered apology. The said order records that on the prayer made by the advocate for the Applicants the Chamber Summons No.995 of 2005 was restored to its original number. The prayers (a) and (b) of the Notice of Motion do not survive in view of subsequent order of restoration passed on 25th October, 2005. The prayer (c) of the Notice of Motion is beyond the scope of this Notice of Motion.

2. The learned counsel appearing for the Plaintiffs seeks time by pointing out that she was not aware of the subsequent order passed on 25th October, 2005. She seeks time on the ground that she wants to verify whether there are any subsequent orders passed in Chamber Summons No.995 of 2005.

3. Time cannot be granted for the simple reason that order of restoration passed on 25th October, 2005 is very much on record and that there are no further orders passed in the Chamber Summons. As the Chamber Summons No.995 of 2005 already stands restored, this Notice of Motion is disposed of as the same does not survive. Place the Chamber Summons No.995 of 2005 on 22nd October, 2007.

JUDGE